

PAID
50709-FL

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BRIAN MASCK,

Plaintiff,

v

THE HERALD COMPANY, INC., a foreign
corporation,

Defendant.

CASE NO. **07-10511**

JUDGE **AVERN COHN**
STEVEN D. PEPE

LAW OFFICE OF GLEN N. LENHOFF
BY: GLEN N. LENHOFF (P32610)
Attorney for Plaintiff
328 South Saginaw Street
8th Floor, North Building
Flint, Michigan 48502
(810)235-5660

FILED
2007 FEB -1 P 2:52
U.S. DIST. COURT CLERK
EAST DIST. MICH
FLINT

A prior civil action was filed arising out of the same set of facts. The prior case was filed in the Circuit Court for the County of Genesee, where it was captioned Brian Masck v The Herald Company, Inc., a foreign corporation and Tony Dearing, Civil Action No. 07-85534-CL, and was assigned to Judge Judith A. Fullerton. The prior case was filed on or about January 19, 2007, and was voluntarily dismissed without prejudice prior to service of the Complaint on the Defendant on January 31, 2007

COMPLAINT AND DEMAND FOR JURY TRIAL

NOW COMES Plaintiff, Brian Masck, by and through his attorney, the Law Office of Glen N. Lenhoff, and hereby complains of Defendant The Herald Company, Inc. as follows:

PARTIES AND JURISDICTION

1. Plaintiff, Brian Masck (hereinafter "Plaintiff") is a resident of the State of Michigan.

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2. Defendant The Herald Company, Inc. (hereinafter "Defendant Herald Co.") is a foreign corporation doing business as The Flint Journal, which conducts business in the State of Michigan.
3. The claims Plaintiff asserts in this lawsuit includes an age discrimination claim under the Elliott-Larson Civil Rights Act, MCLA §37.2202 and a wrongful termination claim pursuant to the Michigan Wrongful Discharge Doctrine.
4. The amount in controversy in this case exceeds twenty-five thousand (\$75,000.00) dollars.
5. This Court has subject matter jurisdiction over this case based on 28 USC 1332(a).
6. Venue is proper for this Court for the reason that the facts in this case arose from Plaintiff's employment in Genesee County.

GENERAL ALLEGATIONS

7. Plaintiff was born on September 13, 1962.
8. Plaintiff began his employment with Defendants on January 7, 1985.
9. At the time Plaintiff became employed by Defendants and throughout his employment with Defendants, Defendants promised Plaintiff he would not be discharged without good cause.
10. Plaintiff performed his job in a diligent and skillful manner.
11. During his employment with Defendants, Plaintiff worked in Defendants' photojournalism department.

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12. Plaintiff was discharged from his position on or about November 3, 2006.
13. Said discharge was without just cause.
14. Said discharge was, in part, due to Plaintiff's age.
15. Plaintiff has suffered economic and emotional damages as a result of his discharge.

**COUNT I - WRONGFUL DISCHARGE CLAIM AGAINST DEFENDANT
HERALD CO. BASED ON DEFENDANT HERALD CO.'S BREACH OF
GOOD CAUSE JOB SECURITY REPRESENTATIONS**

16. Plaintiff hereby alleges and incorporates by reference the preceding paragraphs.
17. Defendant Herald Co. represented to Plaintiff, both at the time Plaintiff began his employment with Defendant Herald Co. and, thereafter, Plaintiff would not be discharged without just cause.
18. Said representations caused Plaintiff to believe that he would not be discharged unless there was good cause.
19. In fact, Plaintiff was discharged without just cause.
20. Under Michigan's Wrongful Discharge Doctrine, an employer is obligated to adhere to representations that the employer makes with respect to job security.
21. Because Defendant Herald Co. breached Defendant Herald Co.'s job security representations, Defendant Herald Co. violated the Michigan Wrongful Discharge Doctrine.

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COUNT II - MCLA §37.2202 AGE DISCRIMINATION
CLAIM AGAINST DEFENDANT

22. Plaintiff hereby alleges and incorporates by reference the preceding paragraphs.
23. Plaintiff was discharged by Defendant on or about November 3, 2006.
24. Plaintiff's age was a substantial causative factor in Defendants' discharge of Plaintiff.
25. Therefore, Plaintiff hereby asserts an MCLA §37.2202 Age Discrimination Claim against Defendant.

WHEREFORE Plaintiff prays for a Judgment against Defendants in damages in such a sum in excess of seventy-five thousand (\$75,000.00) dollars as the jury deems just, together with costs and interest.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial in the captioned case as guaranteed by Rule 38(a) of the Federal Rules of Civil Procedure.

Dated: 2/1/07


GLEN N. LENHOFF (P32610)
Attorney for Plaintiff

Dated: 2/1/07


MICHAEL FREIFELD (P48198)
Attorney for Plaintiff

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The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Brian Masck

DEFENDANTS

The Herald Company, Inc., a foreign corporation and Tony Dearing

07-10511

(b) County of Residence of First Listed Plaintiff Genesee County

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, LIST THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

AVERN COHN
STEVEN D. PEPE

(c) Attorney's (Firm Name, Address, and Telephone Number)

Law Office of Glen N. Lenhoff

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II. BASIS OF JURISDICTION (Select One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Select One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Select One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 11A (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information <input type="checkbox"/> 900 Appeal of Fee <input type="checkbox"/> 901 Denial of Fee <input type="checkbox"/> 902 Allocation Under <input type="checkbox"/> 903 Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN

(Select One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Michigan's Elliott Larsen Civil Rights Act

Brief description of cause:

Age Discrimination

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$
 \$75,000.00+

 CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No
VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Judith A. FullertonDOCKET NUMBER 07-85534-CL

DATE

February 1, 2007

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

☒ Yes

☐ No

If yes, give the following information:

Court: Genesee County Circuit Court

Case No.: 07-85534-CL

Judge: Judith A. Fullerton

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☐ Yes

☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes :
